

# **EXHIBIT 12**

**Redacted Excerpts from the  
Second Deposition of Dr. Hal  
J. Singer**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

- - -

CUNG LE, NATHAN QUARRY, JON: CIVIL ACTION  
FITCH, BRANDON VERA, LUIS :  
JAVIER VAZQUEZ, and KYLE :  
KLINGSBURY on behalf of :  
themselves an others :  
Similarly situated, :  
Plaintiffs : CASE NO.  
: 2:15-cv-01045-RFB  
vs. : (PAL)  
:  
ZUFFA, LLC d/b/a ULTIMATE :  
FIGHTING CHAMPIONSHIP and :  
UFC, :  
Defendants :

- - -

Tuesday, January 23, 2018  
DAY 2

- - -

Continuation of videotaped  
deposition of HAL J. SINGER, Ph.D., taken  
pursuant to notice, was held at the  
offices of BERGER & MONTAGUE, P.C., 1622  
Locust Street, Philadelphia, PA 19103,  
commencing at 10:19 a.m., on the above  
date, before Lori A. Zabielski, a  
Registered Professional Reporter and  
Notary Public in and for the Commonwealth  
of Pennsylvania.

- - -

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1 it's not -- it's certainly not necessary  
2 to engender competitive outcomes so long  
3 as the markets are more open, less  
4 restrictive and rivals get a foothold and  
5 are able to put forward compelling  
6 matches for MMA audiences.

7 Q. Are there -- at this point,  
8 following your rebuttal report, is it  
9 your opinion that there are many ways to  
10 get to a lower foreclosure share that  
11 would constitute an appropriate but-for  
12 world?

13 A. Well, remember, all that  
14 needs to happen to get to a lower  
15 foreclosure share is that Zuffa would  
16 need to change the parameters of its  
17 contracts with fighters in such a way as  
18 to ensure that the cumulative duration of  
19 the restrictions don't take you over some  
20 level that a Court would deem  
21 exclusionary.

22 That's all you need to get  
23 the foreclosure share down. We had  
24 talked about whether 30 months -- 36

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1 months was too long and, you know, what  
2 would be a -- what would be a duration  
3 that would be acceptable to a Court.

4 That, to me, is really the  
5 key element of what you need in a  
6 contract to bring the foreclosure share  
7 down to levels of zero, 20 or 30 percent.  
8 After that, what we are doing here is we  
9 are just filling in other aspects of the  
10 but-for world that would complement or be  
11 consistent with that -- with that  
12 outcome.

13 Q. All right. So in your  
14 opinion, does but-for world have to  
15 include contracts that are -- exclusive  
16 contracts that are no longer than one  
17 year?

18 A. Well, I think we went  
19 through this in the first -- in the first  
20 deposition. But, again, I mean, my  
21 answer is not going to change. It's  
22 going to be -- it's going to depend on  
23 where -- where the Court would draw the  
24 line as to what's considered to be an

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1 exclusionary arrangement.

2 Now, I have tried to inform  
3 the Court based on what I think is the  
4 average career span of a fighter and  
5 that -- and that when we -- when we  
6 figure out how to draw that line, we  
7 ought to take into consideration how much  
8 of a fighter's remaining career span is  
9 left after they sign with Zuffa.

10 But depending on where that  
11 line gets drawn, Zuffa could then  
12 construct its contracts in such a way as  
13 to comply with that -- with that line,  
14 and with an important caveat: So long as  
15 30 percent, say, is tolerated, they  
16 could -- they could carve off 30 percent  
17 or, in fact, more if the market share is  
18 not quite 100 percent. They could carve  
19 off a certain portion of their fighters  
20 and subject them to potentially longer  
21 contracts.

22 So there is not -- there is  
23 not a -- there is not one way to get a  
24 foreclosure share under 30, as we

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1 discussed. There are a lot of ways to  
2 get it down. But these other parameters  
3 that I am informing right now are things  
4 that help fill in what the but-for world  
5 would look like. They are meant to  
6 complement or be consistent with. But  
7 they're -- I think that while we have  
8 been going in circles, these other  
9 parameters, while important, aren't the  
10 levers that are pushing foreclosure down  
11 to 30, 20 or zero percent.

12 Q. Okay. One simple point I  
13 had been wondering about based on the  
14 support, you had told me before that  
15 there is not one way to get foreclosure  
16 share under 30; there are a lot of ways  
17 to get it down.

18 That's still your opinion?

19 A. Oh, sure. I just gave  
20 you -- I just gave you two ways to do it.  
21 One could be across the board, every  
22 single contract contains the same  
23 provision. That would get you down.  
24 Another way to do it would be to do a

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1 Q. And from that -- and from  
2 that, your models -- your damages models  
3 and your second impact model would  
4 estimate -- would estimate damages impact  
5 from that but-for world?

6 MR. CRAMER: Objection to  
7 form.

8 Go ahead.

9 THE WITNESS: If you give me  
10 a but-for foreclosure share, I can  
11 tell you what the -- what the --  
12 how much wages would go up by.

13 BY MR. ISAACSON:

14 Q. All right. Now, if the  
15 Court were to rule that an exclusionary  
16 contract is over two years and it's not  
17 exclusionary, it's two years or less, if  
18 you -- would an appropriate but-for world  
19 then be contracts that were two years or  
20 less, plus some other parameters, and  
21 that would achieve a foreclosure share of  
22 30 percent or less?

23 MR. CRAMER: I am going to  
24 object to the extent that this

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1 calls for a legal conclusion.

2 But go ahead and answer, if  
3 you understand the question.

4 THE WITNESS: Let me -- it  
5 was a two-parter and let me take  
6 the second part, which is probably  
7 easier. And that is, would it --  
8 would it get you to a foreclosure  
9 share below 30 percent? And I  
10 think that by the construction of  
11 your hypothetical, it would, if I  
12 understood it correctly. You are  
13 saying the Court deems anything in  
14 excess of 24 months --

15 MR. ISAACSON: Right.

16 THE WITNESS: -- to be  
17 exclusionary -- let me finish --  
18 and you asked me to posit a world  
19 in which the contracts were  
20 exactly 24 months.

21 BY MR. ISAACSON:

22 Q. My intent is this question  
23 two is the same as the last question. If  
24 the Court has ruled that above two years

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1 is exclusionary and in the first  
2 question, that they ruled that above one  
3 year was exclusionary. Everything else  
4 -- everything else is the same.

5 MR. CRAMER: Same objection.  
6 BY MR. ISAACSON:

7 Q. You would still -- if Zuffa  
8 moved its contracts down to two years or  
9 less, that would achieve foreclosure  
10 shares of 30 percent or less?

11 A. I think that if we draw the  
12 line, if one were to draw the line at 25  
13 months and if -- and if all of the  
14 contracts came in at 24 months, then it's  
15 almost tautological. If that's how we  
16 define foreclosure, then the foreclosure  
17 would come in at less than 30 percent.

18 Q. And in that situation, you  
19 would reach the same conclusion as to the  
20 amount of damages and your second impact  
21 analysis -- second impact model would  
22 remain the same?

23 MR. CRAMER: Objection to  
24 form, incomplete hypothetical,

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1 calls for a legal conclusion.

2 THE WITNESS: I want to  
3 think about it a little more, but  
4 sitting here, it's not -- it's not  
5 obvious how I would change my  
6 impact model or damages model  
7 based on that hypothetical. I  
8 probably would want to think about  
9 it a little more.

10 But my -- what's giving me  
11 some reservation is that -- I  
12 wouldn't draw the line at 24. I  
13 think the 24 represents too much  
14 of a fighter's life span or career  
15 span.

16 And so that -- while it  
17 would be a significant improvement  
18 over where things are today, it's  
19 conceivable that a movement  
20 from 36, roughly where we are  
21 today, to 24, would it engender  
22 different competitive effects than  
23 a movement from 36 to 12? I mean,  
24 certainly at 12, the market is

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1 of the top-tier labor economics journals?

2 MR. CRAMER: Misstates the  
3 testimony.

4 THE WITNESS: Beyond the  
5 ones that I just gave you? I  
6 don't know if I could -- if I  
7 could give you others.

8 BY MR. ISAACSON:

9 Q. Well, which ones have you  
10 named by name?

11 A. I think I gave you  
12 the Journal of Labor Economics. I think  
13 I gave you Review of Labor Statistics, I  
14 believe is one. I am going by memory  
15 here. I think I have seen some specialty  
16 journals as well.

17 I certainly cite articles,  
18 but I don't -- I don't -- in various  
19 labor journals. But I would refer you to  
20 the rankings instead of going by my  
21 memory of labor journals.

22 Q. Okay. And you mentioned the  
23 subfield of sports. Are there leading  
24 journals in that field that you could

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1 name?

2 A. I don't know if I could name  
3 them. I certainly cited articles from  
4 them, but I would refer you to the same  
5 rankings.

6 THE VIDEOGRAPHER: Excuse  
7 me, Counsel. We are approaching  
8 ten minutes left on the disc.

9 MR. ISAACSON: Okay.

10 - - -

11 (Off the record at this  
12 time.)

13 - - -

14 MR. ISAACSON: Why don't we  
15 just change the tape.

16 THE VIDEOGRAPHER: The time  
17 is 12:22 p.m. This is the end of  
18 Disc 1. We are off the record.

19 - - -

20 (Off the record at this  
21 time.)

22 - - -

23 THE VIDEOGRAPHER: The time  
24 is 12:31 p.m. This is the start

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1 of Disc 2. We are on the record.

2 BY MR. ISAACSON:

3 Q. You talked before about how  
4 individual marginal revenue product  
5 varies between fighters, and I think we  
6 agree that fighter compensation agrees  
7 between various fighters.

8 Does current fighter  
9 compensation vary between fighters in the  
10 same way that the individual marginal  
11 revenue product varies between the  
12 fighters?

13 MR. CRAMER: Objection to  
14 form.

15 THE WITNESS: You used the  
16 word "same" and that's what I am  
17 tripping up on. There is  
18 certainly a relationship between a  
19 fighter's MRP and his or her  
20 compensation.

21 BY MR. ISAACSON:

22 Q. Would you describe that  
23 relationship as significant, substantial  
24 or minimal or --

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1 A. Again, I am going to go back  
2 to just basic labor theory, that in a  
3 competitive market, the fighter's  
4 compensation would be equal to his or her  
5 MRP, in a perfectly competitive -- let me  
6 stipulate or let me add that caveat. In  
7 a monopsonized labor market, there is a  
8 wedge between the MRP and the  
9 compensation.

10 And there is certainly a  
11 relationship under both extremes, of the  
12 monopsonized market and the perfectly  
13 competitive market. And part of the  
14 theory of the case is, as you know, that  
15 the conduct here upset that normal  
16 transmission mechanism, that is, it upset  
17 what would have otherwise -- what gains  
18 to fighter productivity that would have  
19 otherwise been passed along in the form  
20 of higher wages didn't occur, in my view,  
21 as they -- as they would have in a world  
22 absent the restrictions on fighter  
23 mobility.

24 Q. All right. I understand you

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1 to be saying that in the current world,  
2 that gains in individual marginal revenue  
3 product won't translate into individual  
4 compensation in the same way as they  
5 would in a competitive world. Then the  
6 competitive world, more of the marginal  
7 revenue product, would translate into  
8 compensation.

9 A. More of the gains.

10 Q. More of the gains.

11 A. Yes.

12 Q. Is there -- however -- with  
13 the understanding that there is not the  
14 same quantitative amount of translation,  
15 is the -- is there still some sort of  
16 linear relationship between the rate they  
17 are going up?

18 A. Again, it depends on whether  
19 we are dealing with an open and free  
20 labor market or a -- or a labor market  
21 that is subject to a monopsony.

22 What we have observed here  
23 is that fighter compensation, although it  
24 was rising, did not -- did not keep up

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1 with the rate of growth in event  
2 revenues, and I am positing that in a  
3 more competitive environment indeed  
4 showing, based on my econometric model,  
5 that the rate of increase in compensation  
6 would have been higher and more in line  
7 with the rate of increase in event  
8 revenue.

9 Q. Now, you talked before about  
10 your estimates of median career length,  
11 and I believe in your rebuttal report,  
12 it's approximately 41 months or five  
13 bouts, fights.

14 A. I think that I spent more  
15 time estimating the duration and months  
16 than in bouts. I think that -- I think  
17 that the relevant -- the relevant figure  
18 here for what we are fighting about is  
19 the duration as measured in months.

20 Q. All right. And to do  
21 that -- to do that analysis, you used  
22 data obtained from sherdog.com; is that  
23 right?

24 A. I believe so, yes.

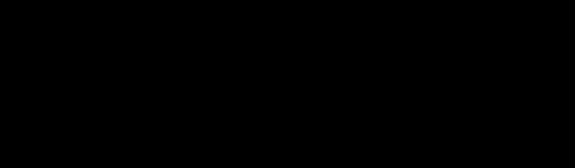
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1 Q. And to do that calculation,  
2 you calculated a career length using  
3 fights for only those promoters in the  
4 tracked market; is that correct?

5 A. Are you speaking about in my  
6 rebuttal report?

7 Q. As of today, where do you  
8 stand on this issue?

9 A. I think the best estimates  
10 as of today is what's in my rebuttal  
11 report. I think I have tried to -- I  
12 have tried to cut it every which way  
13 that's -- what I consider to be



14  
15  
16  
17  
18  
19 Q. All right. And for your  
20 estimates, you relied on data from  
21 sherdog.com?

22 A. I think that is the  
23 beginning of it. I think I need more  
24 than just Sherdog, but I think that that

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1 is the starting point of my analysis.

2 Q. And then you calculated  
3 career length using fights that appeared  
4 in FightMetric?

5 A. It sounds right, but I think  
6 I just feel more comfortable -- given how  
7 detailed the analysis was, I would  
8 probably feel more comfortable going  
9 there and telling you exactly what we  
10 did.

11 Q. All right. You have got  
12 your rebuttal report in front of you,  
13 if you want to look at it.

14 A. Okay. Let me see. If you  
15 have the chart handy, that might get us  
16 there faster. If not, I will try to find  
17 it.

18 Q. It might be on page 53. You  
19 have got median and mean duration to  
20 Table 1 there.

21 A. Right. But I think -- I  
22 think I now -- I now see what was  
23 tripping me up. You had imposed a  
24 requirement, the added requirement that



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1 we only measure their career span while  
2 they are within the relevant input  
3 market, and that's only the case for the  
4 second and third rows, you see. I think  
5 you --

6 Q. You -- I see. All right.

7 A. And the third market is yet  
8 a different -- I mean, those are  
9 different -- those are different market  
10 definitions. And I think you asked me  
11 for one in particular.

12 Q. All right. So when you say  
13 that your best estimate of the career of  
14 a fighter is found in your rebuttal  
15 report, would that be Table 1 on page 53  
16 of your report?

17 A. Correct.

18 Q. And there, you look at four  
19 different things. One is limited to when  
20 Zuffa fighters are fighting in Zuffa  
21 bouts; is that right?

22 A. Correct.

23 Q. So that would exclude Zuffa  
24 fighters who fought for other promoters

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1 either before or after their career at  
2 Zuffa?

3 A. Correct.

4 Q. And then you use the  
5 relevant input market tracked measure.  
6 That is based on FightMetric data,  
7 correct?

8 A. Correct.

9 Q. And that would be -- and you  
10 would only be calculating fights that  
11 were for the promoters in that market, in  
12 that -- in FightMetric?

13 A. Correct. When they go  
14 outside of the relevant input market as  
15 defined by the tracked measure, then they  
16 would no longer be considered to be  
17 active in their career.

18 Q. All right. And you would --  
19 and then for the third way you would look  
20 at it, you would look for the ranked  
21 measure, which is -- which would include  
22 only the promoters in FightMetric?

23 A. Well, my ranked measure  
24 members starts with a set of all fighters

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1 in FightMetric and then expands it  
2 to also include those that are in Fight  
3 Matrix I think plus another promotion as  
4 well.

5 Q. I think they are totally  
6 over overlapping, but let me -- let me --

7 A. Oh, it's true that the way  
8 it's constructed, the tracked measure of  
9 the market definition sits perfectly  
10 inside of the ranked measure, right.

11 Q. All right. So the ranked  
12 measure includes all the promoters who  
13 are either in Fight Matrix or  
14 FightMetric?

15 A. The fighters associated with  
16 promoters, correct, yes.

17 Q. So if you had fights outside  
18 of those promoters, those would not be  
19 counted as part of your career?

20 A. Again, I just want to be  
21 careful that as we moved to the ranked  
22 measure, the -- it's the fighter that is  
23 driving the analysis, not his or her  
24 associated promoter, right? It doesn't

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1 begin with a set of promoters. It  
2 happens to generate a set of promoters as  
3 a byproduct. But here, fighters are  
4 going to be included regardless of who  
5 their associated promoter is so long as  
6 they have a rank higher than 650.

7 Q. Right. But I'm not talking  
8 about market definition now. I am just  
9 talking about how you calculate the  
10 median career of a fighter.

11 A. Sure.

12 Q. If they -- if they had  
13 fights outside of the promoters who are  
14 counted in FightMetric or Fight Matrix,  
15 those would not be counted as part of the  
16 fighter's career?

17 A. I wouldn't -- I wouldn't put  
18 it that way. I would feel more  
19 comfortable saying something like that  
20 with respect to the FightMetric measure,  
21 which is the tracked measure, because  
22 that is driven by the identity of the  
23 promoter.

24 The identity of the promoter

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1 some help. So promoters inside of  
2 my relevant market or outside of  
3 my relevant market?

4 BY MR. ISAACSON:

5 Q. Yes, promoters inside your  
6 relevant market.

7 A. Remember -- the question  
8 doesn't make any sense because it's a  
9 hypothetical monopsonist pushing the  
10 wages down, so it is the only -- it's the  
11 only buyer in the relevant market.

12 Q. In each of the relevant  
13 markets that you defined, did you assume  
14 that Zuffa was the only relevant buyer?

15 A. No.

16 Q. In the -- for example, in  
17 the tracked market, did you test whether  
18 if you reduced the individual pay of  
19 Zuffa fighters, Bellator would step in  
20 and pay the -- pay the amount they were  
21 being paid and the fighter would move to  
22 Bellator?

23 A. I don't think the question  
24 makes sense given that Bellator wasn't

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1 included in the -- in the tracked market  
2 or at least -- sorry -- or at least  
3 Bellator's fighters. Remember, we are  
4 contemplating a hypothetical monopsonist  
5 who controlled all of the fighters in the  
6 tracked market, including Bellator's  
7 fighters. Would that be a sufficient  
8 number of fighters such that you could  
9 push wages below competitive levels.

10 Q. All right. Bellator is a  
11 promoter in the tracked market, right?

12 A. Correct.

13 Q. So is Affliction, correct?

14 A. Anyone who was tracked by  
15 FightMetric.

16 Q. Okay. So was WEC and  
17 EliteXC?

18 A. I can't tell you by memory  
19 if those were or were not.

20 Q. And did you -- I am just  
21 trying to understand by the end of your  
22 reply report what SSNIP analysis you have  
23 done.

24 Did you do any actual

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1 testing to experiment to say what would  
2 happen if Zuffa lowered what it's paying  
3 its fighters, whether those fighters  
4 would move to another promoters, such as  
5 Bellator, World Series of Fighting?

6 MR. CRAMER: Asked and  
7 answered

19 BY MR. ISAACSON:

20 Q. Other -- so you looked at  
21 record evidence.

22 A. Yes.

23 Q. Other than looking at the  
24 record evidence, did you do any testing

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1 to determine whether fighters in any of  
2 your -- in any of your markets you were  
3 defining would move to another promoter,  
4 such as Bellator or World Series of  
5 Fighting, if their individual pay  
6 declined?

7 MR. CRAMER: Objection to  
8 form.

9 THE WITNESS: When you think  
10 about it, once you get into the  
11 tracked, and particularly once you  
12 get into the ranked, the market is  
13 drawn so broadly that it subsumes  
14 all of these rival promoters. So  
15 the question just doesn't make  
16 sense as posed. They are all in  
17 the relevant market.

18 BY MR. ISAACSON:

19 Q. Well, are you saying that  
20 all -- all the rival promoters are in the  
21 tracked market or in the ranked market or  
22 in both?

23 A. No, that's not what I am  
24 saying. I'm saying that your question



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1 pertained to Bellator, I think, and  
 2 Bellator is inside of the tracked. And  
 3 so it doesn't make sense to ask whether a  
 4 fighter in this hypothetical market would  
 5 substitute to Bellator. It's already in  
 6 there. We are asking if you control all  
 7 of those fighters, in addition to Zuffa's  
 8 fighters, in addition to whoever else is  
 9 inside of the tracked market, would that  
 10 be enough to permit you to exercise  
 11 monopsony power.

12 So I could help you along,  
 13 but asking if they would substitute to  
 14 Bellator isn't -- is nonsensical.

15 Q. Well, you agree with me that  
 16 for the tracked market, Bellator,  
 17 EliteXC, WEC and other promoters are  
 18 participants in that market?

19 A. I don't like to put it that  
 20 way, no.

21 Q. All right. Do you agree  
 22 that they are customers for the fighters?

23 A. They are buyers in that --  
 24 in that market, yes.

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1 Q. Okay. So in the tracked  
 2 market, did you test whether fighters in  
 3 that market would move to another buyer  
 4 in that market such as Bellator if their  
 5 individual pay declined other than  
 6 looking at record evidence?

7 A. Again, no, and that's not  
 8 the relevant experiment to perform.

9 Q. Okay. And in the tracked  
 10 market, did you test whether fighters in  
 11 that market would move to another buyer  
 12 in that market such as World Series of  
 13 Fighting if their individual pay declined  
 14 other than looking at record evidence?

15 A. World Series of Fighting, I  
 16 just can't recall if that's a promoter  
 17 that was tracked by FightMetric. You  
 18 might -- you might be able to help me  
 19 out, and then I could give you an answer.

20 Q. World Series of Fighting is  
 21 included in the -- is included in Fight  
 22 Matrix in your tracked -- in your  
 23 tracked --

24 A. Did you mean to say Fight --

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1 FightMetric?

2 Q. Ranked market.

3 A. Oh, ranked market.

4 Q. Yes.

5 A. So have you identified -- I  
 6 think it would help me. You have  
 7 identified a promoter now for the first  
 8 time in the series of questions that sits  
 9 outside of the tracked but inside of the  
 10 ranked.

11 Q. Yes.

12 A. Got it.

13 Q. And maybe it will help if I  
 14 repeat the question --

15 A. Okay.

16 Q. -- if anybody ever reads  
 17 this.

18 A. Okay.

19 Q. The -- in the -- in the  
 20 ranked market, did you test whether  
 21 fighters in that market would move to  
 22 another buyer in the market such as World  
 23 Series of Fighting if their individual  
 24 pay declined other than what you have

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1 said, you looked at revenue evidence?

2 A. I would say no. They are --  
 3 they are already in the ranked market and  
 4 so we are not looking at substitution  
 5 within the ranked market. That's not the  
 6 relevant inquiry.

7 Q. Okay. And -- all right.  
 8 Now, for each of those markets, let's go  
 9 to promoters that are outside the market.  
 10 Okay.

11 So for the tracked market,  
 12 did you look at -- did you test whether  
 13 fighters in that -- let me start over.

14 In the tracked market, other  
 15 than looking at record evidence, did you  
 16 test whether fighters in that market  
 17 would move to another buyer outside the  
 18 market such as World Series of Fighting  
 19 if their individual pay declined?

20 A. I think that it was largely  
 21 informed through record evidence and  
 22 through other inferences that I made,  
 23 such as the profitability of Zuffa's  
 24 weight suppression with a much smaller

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1 set of fighters. I think that there was  
2 not a separate empirical analysis of  
3 defection of fighters from -- the  
4 promoters included -- in tracked, for  
5 example, into the promoters included in  
6 ranked but not in tracked.

7 Q. And your answer would be the  
8 same for ranked that -- in terms of the  
9 type of analysis you used?

10 A. Yes.

11 Q. And your answer would be the  
12 same for the headliner submarket?

13 A. Correct.

14 MR. CRAMER: Whenever it's a  
15 good time for a break, we have  
16 been going for over an hour.

17 MR. ISAACSON: I think I may  
18 be almost finished with something  
19 here.

20 MR. CRAMER: Sure.

21 BY MR. ISAACSON:

22 Q. Did you consider any  
23 narrower definitions to the market, by  
24 which I mean did you consider a smaller

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1 market of buyers than your tracked  
2 market?

3 A. Sure, the headliner market.  
4 The headliner submarket, as I like to  
5 call it.

6 Q. Was the headliner submarket  
7 the smallest market you considered?

8 A. That is the smallest market  
9 I considered.

10 MR. ISAACSON: All right.  
11 Why don't we take a break.

12 THE VIDEOGRAPHER: The time  
13 is 2:33 p.m. We are going off the  
14 record.

15 - - -

16 (Off the record at this  
17 time.)

18 - - -

19 THE VIDEOGRAPHER: The time  
20 is 2:51 p.m. We are back on the  
21 record. This is the start of  
22 Disc 3.

23 BY MR. ISAACSON:

24 Q. Before the break, we were

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1 talking about the markets you defined.  
2 With respect to the tracked market, did  
3 you include all of the fighters that  
4 fought for all of the buyers in that  
5 market?

6 A. It's conceivable that there  
7 are some fighters who were out listed in  
8 FightMetric but are affiliated with a  
9 promoters who is. It's conceivable. But  
10 I think I am more comfortable saying that  
11 we let the FightMetric data dictate who  
12 was in the market. It's just whoever  
13 they tracked.

14 Q. Okay. And the reason that  
15 you didn't include all of the fighters  
16 for all of the promoters in the tracked  
17 market is because you let the FightMetric  
18 data dictate who was in the market?

19 A. Not really. I think that we  
20 are -- we are getting confused again  
21 about -- about the market definition  
22 exercise and the way that I measured and  
23 identified fighters in the market.

24 I used various techniques,

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1 indirect and direct, of the SSNIP test to  
2 try to inform the contours. And I got to  
3 an MMA fighter relevant input market, and  
4 then I went out and found two databases,  
5 one by FightMetric, another by Fight  
6 Matrix, that would allow me to inform or  
7 populate who the fighters were in that  
8 market after we have defined it using the  
9 SSNIP test.

10 So I -- I am just hesitating  
11 on the way that you put the question.  
12 It's not as if the database dictated who  
13 was in the market. We defined a market  
14 as MMA -- professional MMA fighters, and  
15 then we went out looking for databases  
16 that would allow us to populate that  
17 market with actual fighters.

18 Q. Did you use the SSNIP test  
19 to populate who were the buyers in the  
20 market you defined?

21 A. No.

22 Q. Why -- why didn't you  
23 include all of the fighters who fought  
24 for buyers in the tracked market in your

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1 A. Yes.

2 Q. Now, your output markets are  
3 the live MMA events in which the  
4 participating fighters are either in the  
5 relevant input market or the relevant  
6 input submarket?

7 A. Yes.

8 Q. Okay. And the consumers of  
9 the output market include viewers, cable  
10 networks, broadcast networks and  
11 sponsors; is that fair?

12 A. Well, certainly, viewers and  
13 consumers.

14 Can I hear -- can I hear --

15 Q. Viewers, cable networks,  
16 broadcast networks, sponsors.

17 A. I feel more comfortable  
18 saying that viewers are the -- are the  
19 primary consumers in the output market,  
20 not the -- not the cable distributors.  
21 That's just an intermediary between the  
22 viewer and the -- and the producer of the  
23 event.

24 Q. So I am not -- I wasn't

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1 trying to assess anybody as primary or  
2 secondary.

3 Rather, consumers -- do the  
4 consumers in your output market include  
5 viewers, cable networks, broadcast  
6 networks and sponsors?

7 MR. CRAMER: Asked and  
8 answered.

9 THE WITNESS: I don't recall  
10 looking at substitution by  
11 sponsors or substitution by cable  
12 distributors. I think that the  
13 right lens is that of the  
14 consumer's perspective, ultimately  
15 the viewer.

16 BY MR. ISAACSON:

17 Q. All right. Well, let me use  
18 a -- maybe it's my word choice.

19 Are the customers in your  
20 relevant output market viewers, cable  
21 networks, broadcast networks and  
22 sponsors?

23 MR. CRAMER: Objection to  
24 form.

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1 THE WITNESS: And let's just  
2 focus on cable networks. Are  
3 you -- I took your first question  
4 to mean cable distributors. Are  
5 you -- are you intentionally  
6 making a distinction between cable  
7 networks and cable distributors  
8 now?

9 BY MR. ISAACSON:

10 Q. No. I am not even sure what  
11 you mean by a cable distributors.

12 A. Oh, a cable distributor  
13 would be like Comcast, and a cable  
14 network would be like a station or a  
15 network that appears on the cable system.

16 Q. I mean -- well, let's --  
17 let's do both.

18 A. Okay.

19 Q. So -- so Comcast is under  
20 your definition a cable station?

21 A. No. Comcast is a  
22 distributor.

23 Q. A distributor. Okay.

24 A. Comcast happens to be

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1 vertically integrated into certain  
2 networks as well. But...

3 Q. All right. Okay. So are  
4 the customers in your relevant output  
5 market viewers, cable stations, cable  
6 networks, broadcast networks and  
7 sponsors?

8 MR. CRAMER: Form.

9 THE WITNESS: I think that  
10 I -- the most natural customer to  
11 think of in the output market,  
12 which is the consumption of the  
13 event, is the viewer. I think  
14 that we could -- we could talk  
15 about the way that sponsors -- the  
16 role that sponsors play in this  
17 market and the role that cable  
18 networks play, but I -- they are  
19 not -- they are not symmetrically  
20 aligned with the viewers. And I  
21 think that if -- I am trying to  
22 recall the methods that I used to  
23 define the contours, and I think  
24 it was largely from the

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1 perspective of viewers.

2 BY MR. ISAACSON:

3 Q. So for your relevant output  
4 market, are sponsors customers in that  
5 market?

6 MR. CRAMER: Asked and  
7 answered.

8 THE WITNESS: I just don't  
9 like using -- I don't like using  
10 the word "customer."

11 BY MR. ISAACSON:

12 Q. Okay. Are -- in your output  
13 market, are sponsors buyers in that  
14 market?

15 MR. CRAMER: Asked and  
16 answered.

17 THE WITNESS: Sponsors are  
18 buying advertising slots that are  
19 associated with the event itself,  
20 but I think the consumption of the  
21 event is most properly understood  
22 from the lens of the viewer, the  
23 consumer.  
24

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1 BY MR. ISAACSON:

2 Q. So does that mean sponsors  
3 are not buyers in your relevant output  
4 market?

5 MR. CRAMER: Asked and  
6 answered.

7 THE WITNESS: They buy  
8 advertising slots that are sold  
9 alongside the event itself, but I  
10 am -- I am considering the event  
11 as the -- as what's being  
12 produced.

13 BY MR. ISAACSON:

14 Q. Okay. In your relevant  
15 output market, are broadcast networks --  
16 I guess you don't like using the term  
17 "customers" for broadcast networks; is  
18 that --

19 A. They are certainly not  
20 the -- not the ultimate customer. They  
21 are an intermediary that gets them  
22 between the ultimate customer and the  
23 producer. And only for a small sliver of  
24 events.

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1 I think the action, the  
2 television action at least, is occurring  
3 on the pay-per-view side, not on the  
4 non-pay-per-view viewing side.

5 Q. As you define your relevant  
6 output market, are broadcast networks  
7 customers or buyers?

8 A. I think the broadcast  
9 networks are buying the rights to  
10 distribute the events to the ultimate  
11 consumer, which is the viewer. So I  
12 still like to think about the consumer or  
13 the buyer in the output market, the  
14 event, the production of the event as the  
15 consumer, the viewer, ultimately.

16 Q. And so I just need to go  
17 over this again because I understand you  
18 think the consumer -- you think about the  
19 consumer as the -- I guess as the -- as  
20 the buyer ultimately, but I am trying to  
21 figure out who you are excluding. I  
22 understand you have got the consumers in  
23 there.  
24

Are broadcast networks

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1 customers or buyers in your -- in the  
2 relevant output market you have defined?

3 MR. CRAMER: Asked and  
4 answered.

5 THE WITNESS: I think they  
6 are an intermediate -- an  
7 intermediary that stands between  
8 the customers and the producers of  
9 the events, and only for a small  
10 sliver of what I consider the  
11 valuable television that's being  
12 produced here.

13 BY MR. ISAACSON:

14 Q. So does that mean they are  
15 or are not customers or buyers in your  
16 relevant output market?

17 A. I think -- sorry.

18 MR. CRAMER: I was going to  
19 say, same objection.

20 Go ahead. You may answer.

21 THE WITNESS: I would -- I  
22 would say it depends on how you  
23 want to -- what question are you  
24 trying to answer?

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1 BY MR. ISAACSON:

2 Q. I am talking about the  
3 questions you are answering that you are  
4 defining in your market. I am talking  
5 about your relevant output market.

6 A. Sure.

7 Q. Are the buyer -- are the  
8 broadcast networks buyers or customers in  
9 that market?

10 MR. CRAMER: Same objection.

11 THE WITNESS: I think  
12 that -- I would have to go back to  
13 my initial report, but if I am  
14 remembering correctly, I was  
15 looking at to where viewers would  
16 go in response to a SSNIP in the  
17 output market, not where cable  
18 distributors would go, not where  
19 cable networks would go. I was  
20 looking at where viewers would go.  
21 That's my memory, sitting here  
22 today, as to -- as to how I  
23 performed the SSNIP in the output  
24 market.

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1 BY MR. ISAACSON:

2 Q. So at the -- by the end of  
3 your reply report, you have not done a  
4 SSNIP analysis for your output market for  
5 sponsors; is that correct?

6 MR. CRAMER: Objection to  
7 form.

8 THE WITNESS: I would have  
9 to go back and look at my initial  
10 report, but I -- my -- sitting  
11 here, I don't -- I don't recall  
12 doing that.

13 BY MR. ISAACSON:

14 Q. Okay. And at the end of  
15 your reports, for your -- for the  
16 relevant output market you have defined,  
17 you haven't done a SSNIP analysis for  
18 broadcast networks; is that correct?

19 A. I think the same answer.  
20 It's possible I had record evidence that  
21 spoke to the views of broadcasters, but  
22 I -- sitting here, that's not what I  
23 recall.

24 Q. Okay. For your relevant

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1 output market as you define it, you  
2 didn't do a SSNIP analysis for cable  
3 stations or cable networks?

4 A. I don't recall doing a  
5 SSNIP, but I would have to go back and  
6 refer to my -- from that perspective, but  
7 I would have to go back and refer to my  
8 initial report.

9 Q. Okay. And do you -- are you  
10 able to say today whether cable stations  
11 or cable networks are customers in the  
12 relevant output market that you defined?

13 A. I think that with the caveat  
14 that we are studying the non-pay-per-view  
15 events, which, of course, are not the  
16 important or salient or marketable or  
17 valuable component of the content that's  
18 being created, I think that you could say  
19 that the cable networks can serve as a  
20 proxy for the preferences of the ultimate  
21 consumers, but I think that I conducted  
22 my relevant output market analysis from  
23 the perspective of the ultimate consumers  
24 or customers, namely, the viewers.

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1 Q. Are the consumers the only  
2 relative -- relevant customers in the  
3 output market you have defined?

4 A. Can I have it back?

5 - - -

6 (The reporter read from the  
7 record as requested.)

8 - - -

9 BY MR. ISAACSON:

10 Q. And by "consumers," I mean  
11 individuals who attend or watch events,  
12 such as myself.

13 A. I am going to have it back.  
14 I am sorry.

15 Q. Sure. I don't blame you.

16 - - -

17 (The reporter read from the  
18 record as requested.)

19 - - -

20 BY MR. ISAACSON:

21 Q. And by "consumers," I mean  
22 individuals who attend events or watch  
23 them.

24 A. I don't know what it means



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Q. All right.  
 MR. ISAACSON: Thank you. I  
 don't have any more questions.  
 MR. CRAMER: Very good.  
 THE VIDEOGRAPHER: Okay.  
 The time is 5:12 p.m. This is the  
 end of Dr. Hal Singer's  
 deposition. We are going off the  
 record.

- - -  
 (The deposition concluded at  
 5:12 p.m.)  
 - - -

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## INSTRUCTIONS TO WITNESS

Please read your deposition over  
 carefully and make any necessary  
 corrections. You should state the reason  
 in the appropriate space on the errata  
 sheet for any corrections that are made.

After doing so, please sign the  
 errata sheet and date it.

You are signing same subject to the  
 changes you have noted on the errata  
 sheet, which will be attached to your  
 deposition.

It is imperative that you return  
 the original errata sheet to the deposing  
 attorney within thirty (30) days of  
 receipt of the deposition transcript by  
 you. If you fail to do so, the  
 deposition transcript may be deemed to be  
 accurate and may be used in court.

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## CERTIFICATE

I HEREBY CERTIFY that the  
 witness was duly sworn by me and that  
 the deposition is a true record of  
 the testimony given by the witness.

\_\_\_\_\_  
 Lori A. Zabielski  
 Registered Professional Reporter  
 CaseViewNet Reporter  
 Dated: January 24, 2018

(The foregoing certification  
 of this transcript does not apply to any  
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 supervision of the certifying reporter.)

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## ACKNOWLEDGEMENT OF DEPONENT

I, \_\_\_\_\_, do  
 hereby certify that I have read the  
 foregoing pages, 338-652 PGS, and that  
 the same is a correct transcription of  
 the answers given by me to the questions  
 therein propounded, except for the  
 correction or changes in form or  
 substance, if any, noted in the attached  
 Errata Sheet.

\_\_\_\_\_  
 HAL J. SINGER, Ph.D.      DATE

Subscribed and sworn

to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

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## LAWYER'S NOTES

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